



DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 8360

[LLMTB01000-L12200000.MA0000 212 – MO# 4500157128]

Notice of Proposed Supplementary Rule for Public Lands Managed by the Missoula Field Office in Missoula, Granite, and Powell Counties, Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed supplementary rule.

SUMMARY: The Bureau of Land Management (BLM) proposes to establish a supplementary rule for BLM-administered public lands within the jurisdiction of the Missoula Field Office. This proposed supplementary rule would allow the BLM to enforce decisions in the Missoula Resource Management Plan (RMP) that cover the general area and specific rules for the Bear Creek Flats, Blackfoot River Recreation Area, Dupont Acquired Lands, Garnet Ghost Town, Limestone Cliffs, and Sperry Grade Area. This rule is needed to further protect natural and historic resources and provide for public health and safety.

DATES: The BLM must receive your comment by [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Comments received after this date may not be considered in the development of the final supplementary rule.

ADDRESSES: You may submit comments by the following methods: email to BLM_MT_Missoula_FO@blm.gov, or mail or hand deliver comments to Proposed Supplementary Rule, Bureau of Land Management, Attention: Erin Carey, Missoula Field Manager, Missoula Field Office, 3255 Fort Missoula Road, Missoula, MT 59804.

FOR FURTHER INFORMATION CONTACT: Kelly Cole, Field Staff Law Enforcement Ranger at kccole@blm.gov or Erin Carey, Missoula Field Manager at

ecarey@blm.gov; Missoula Field Office, at (406) 329-3914.

Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services for contacting Kelly Cole. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

Written comments on this proposed supplementary rule should be specific, confined to issues pertinent to this proposed supplementary rule, and explain the reason for any recommended change. Where possible, comments should reference the specific section or paragraph of this proposed supplementary rule the comments are addressing. The BLM will consider comments received before the end of the comment period (see **DATES**), including those postmarked before the deadline and delivered to the address listed earlier (see **ADDRESSES**). Comments, including your name, street address, phone number, and other personally identifiable information included in the comment will be available for public review during regular business hours (8 a.m. to 4:30 p.m. local time Monday through Friday, except on Federal holidays) in the Missoula Field Office. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment – including your personal identifying information – may be made publicly available at any time. While you can ask in your comment to withhold your personal identifying information from public review, we cannot guarantee we will be able to do so.

II. Background

The Missoula Field Office completed an RMP covering approximately 167,000

acres of public lands within its boundaries in January 2021. The RMP is available at <https://eplanning.blm.gov/eplanning-ui/project/58107>. These public lands are in Missoula, Granite, and Powell Counties in western Montana. The Missoula Field Office needs to adopt this proposed supplementary rule to implement decisions in the RMP. The supplementary rule would allow enforcement of these decisions and would protect natural resources and public health and safety.

The BLM included the proposed supplementary rule in the draft RMP and draft environmental impact statement (EIS), which were available for a 60-day public comment period following publication of a notice in the Federal Register (84 FR 22513, May 17, 2019). The BLM again included the draft supplementary rule in the final EIS, which was subject to a 30-day public protest period following publication of a notice in the Federal Register (85 FR 8607, February 14, 2020).

The BLM received no public comments on this proposed supplementary rule during either of these public engagement periods.

III. Discussion of the proposed supplementary rule

This proposed supplementary rule would apply to public lands and BLM facilities managed by the Missoula Field Office.

The proposed rule conforms with management decisions contained in the Missoula RMP (2021). The focus of an RMP is to guide the management of resources for both protection and utilization, and to address issues related to public health and safety. The RMP includes decisions concerning restrictions, prohibitions, and allowable uses to address identified issues or achieve management goals and objectives. For these decisions to be effectively implemented, enforcement is often needed, first to ensure the management decision is properly understood and followed and second to provide for civil and criminal penalties should these restrictions and prohibitions not be followed.

Although many management decisions can be implemented through existing laws and regulations, often unique and site-specific restrictions and prohibitions need to be clearly defined for ease of understanding and clarity as described further below. The BLM's tools to achieve this understanding and clarity are closure and restriction orders, supplementary rules, and special rules.

Specifically, this proposed supplementary rule for the Missoula RMP includes:

- Four restrictions that would apply to all public lands and facilities managed by the BLM Missoula Field Office. These restrictions are intended to promote public safety, reduce user conflicts and safety hazards on public lands, and prevent resource damage. A prohibition on burning treated lumber and wood materials containing nails and screws is needed because such activity not only leaves garbage on public lands but could also lead to vehicle tire damage. Limiting the use of airsoft and paintball guns would reduce the number of false alarms to law enforcement about the use of "guns" in highly visited areas. Creating a rule to limit memorials on public lands would give managers the flexibility to decide the appropriate uses of public lands as well as reduce conflicts and resource damage. The intent of the 72-hour limit on unattended personal property is to curb transient camps from forming, along with any associated garbage that may accumulate.
- The proposed supplementary rule's provisions for the Limestone Cliffs Special Recreation Management Area (SRMA) are needed to protect the unique geological feature of the limestone cliffs, which are an integral part of the SRMA, and to provide for public safety while rock climbing along the cliffs.
- The proposed supplementary rule's provisions in Bear Creek Flats would supplement the existing supplementary rule, finalized in March 2004 (69 FR 10743), for the Blackfoot River, which established consistency with the Montana

Department of Fish, Wildlife and Parks' Blackfoot River Recreation Corridor rules. The proposed Bear Creek Flats provisions would not replace the existing rule; rather, they would expand the existing rule to include the Bear Creek Flats acquisition.

- The proposed supplementary rule includes two new restrictions for lands within the Blackfoot SRMA: (1) no jumping off any bridges along the Blackfoot River corridor, which is intended to enhance public safety for all recreational river users; and (2) time restrictions for day-use sites, from 10 p.m. to 5 a.m., thereby prohibiting camping at day-use-only sites.
- The proposed supplementary rule's provisions in the Dupont Acquired Lands area are needed to be consistent with conditions the BLM agreed to when it acquired the area via donation. These conditions are specified in the Dupont Conservation Easement signed in April 1997. Although the BLM has complied with these conditions since the acquisition, this supplementary rule would enable the BLM to enforce the conditions.
- The proposed supplementary rule's provisions for Sperry Grade are necessary to enforce a seasonal closure on human entry to the Sperry Grade area, which would be consistent with the Montana Department of Fish, Wildlife and Parks' closure-to-human-entry rule for the adjacent Blackfoot-Clearwater Game Range. The purpose of the seasonal closure is to protect the elk and elk winter range. When the BLM acquired the Sperry Grade in 1992, the BLM decided, informed by an environmental assessment, that the grade would be managed similarly to the Blackfoot-Clearwater Game Range, including closing it to human entry during the winter. This proposed supplementary rule would make that seasonal closure on the Sperry Grade enforceable.

- The proposed supplementary rule's provisions for Garnet Ghost Town would help reduce threats to the fragile late 19th century buildings and artifacts that comprise the popular tourist area.

The authority for this supplementary rule is set forth at sections 303 and 310 of the Federal Land Policy and Management Act, 43 U.S.C. 1733 and 1740. The BLM is proposing this supplementary rule under the authority of 43 Code of Federal Regulations (CFR) 8365.1–6, which allows BLM State Directors to establish supplementary rules for the protection of persons, property, and public lands and resources. This provision allows the BLM to issue rules of less than national effect by publishing the rules in the Federal Register, without codifying them in the CFR.

IV. Procedural Matters

Executive Order 12866, Regulatory Planning and Review

This proposed supplementary rule is not a significant regulatory action and is not subject to review by the Office of Management and Budget under Executive Order 12866. The proposed supplementary rule would not have an effect of \$100 million or more on the economy and would not adversely affect in a material way productivity, competition, jobs, the environment, public health or safety, or State, local or Tribal governments or communities. The proposed supplementary rule would not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. The proposed supplementary rule would not materially alter the budgetary effects of entitlements, grants, user fees, or loan programs, or the rights or obligations of their recipients, nor does it raise novel legal or policy issues. The proposed supplementary rule would merely impose limitations on certain activities on certain public lands to protect natural resources and human health and safety.

National Environmental Policy Act

The BLM analyzed this proposed supplementary rule's requirements in the EIS

associated with the Missoula RMP.

The BLM included the proposed supplementary rule in the draft RMP and draft EIS, which were available for a 60-day public comment period. The BLM again included the draft supplementary rule in the final EIS, which was subject to a 30-day public protest period. The BLM received no comments on the proposed rule's requirements during either of the public engagement periods.

Regulatory Flexibility Act

Congress enacted the Regulatory Flexibility Act of 1980 (RFA), which requires a regulatory flexibility analysis if a rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. This proposed supplementary rule would have no effect on business entities of any size. The proposed supplementary rule would merely impose reasonable restrictions on certain activities on certain public lands to protect natural resources and the environment and human health and safety. Therefore, the BLM certifies under the RFA that this proposed supplementary rule would not have a significant economic impact on a substantial number of small entities.

Small Business Regulatory Enforcement Fairness Act

This proposed supplementary rule is not a “major rule” as defined at 5 U.S.C. 804(2). The proposed supplementary rule would merely impose reasonable restrictions on certain recreational activities on certain public lands to protect natural resources, the environment, and human health and safety. The proposed supplementary rule would not:

- (1) Have an annual effect on the economy of \$100 million or more;
- (2) Cause a major increase in costs or prices for consumers, individual industries, geographic regions, or Federal, State, or local agencies; or
- (3) Have significant adverse effects on competition, employment, investment,

productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign based enterprises in domestic and export markets.

Unfunded Mandates Reform Act

This proposed supplementary rule would not impose an unfunded mandate on State, local, or Tribal governments or the private sector of more than \$100 million per year; nor would it have a significant or unique effect on State, local, or Tribal governments or the private sector. The proposed supplementary rule would merely impose reasonable restrictions on certain recreational activities on certain public lands to protect natural resources, the environment, and human health and safety. Therefore, the BLM is not required to prepare a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 et seq.).

Executive Order 12630, Governmental Actions and Interference With Constitutionally Protected Property Rights (Takings)

This proposed supplementary rule would not constitute a government action capable of interfering with constitutionally protected property rights. The proposed supplementary rule would not address property rights in any form and would not cause the impairment of constitutionally protected property rights. Therefore, the BLM has determined that this proposed supplementary rule would not cause a “taking” of private property or require further discussion of takings implications under this Executive order.

Executive Order 13132, Federalism

This proposed supplementary rule would not have a substantial direct effect on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, the BLM has determined that the proposed supplementary rule would not have sufficient federalism implications to

warrant preparation of a federalism assessment.

Executive Order 12988, Civil Justice Reform

Under Executive Order 12988, the BLM has determined that this proposed supplementary rule would not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of Executive Order 12988.

Executive Order 13175, Consultation and Coordination with Indian Tribal Governments

In accordance with Executive Order 13175, the BLM has found that this proposed supplementary rule does not include policies that have Tribal implications and would have no bearing on trust lands or on lands for which title is held in fee status by Indian Tribes or U.S. Government-owned lands managed by the Bureau of Indian Affairs.

Information Quality Act

In developing this proposed supplementary rule, the BLM did not conduct or use a study, experiment, or survey requiring peer review under the Information Quality Act (Section 515 of Pub. L. 106–554).

Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use

This proposed supplementary rule would not comprise a significant energy action. The proposed supplementary rule would not have an adverse effect on energy supply, production, or consumption and would have no connection with energy policy.

Executive Order 13352, Facilitation of Cooperative Conservation

In accordance with Executive Order 13352, the BLM has determined that this proposed supplementary rule would not impede facilitating cooperative conservation; would take appropriate account of and consider the interests of persons with ownership or other legally recognized interests in land or other natural resources; would properly

accommodate local participation in the Federal decision-making process; and would provide that the associated programs, projects, and activities are consistent with protecting public health and safety.

Paperwork Reduction Act

This proposed supplementary rule does not contain information collection requirements that the Office of Management and Budget must approve under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3521.

V. Proposed Rule

Author

The principal author of this proposed supplementary rule is Erin Carey, Field Manager, BLM Missoula Office.

For the reasons stated in the preamble, and under the authority of 43 U.S.C. 1733(a) and 1740, and 43 CFR 8365.1-6, the State Director proposes a supplementary rule for public lands and facilities in the Missoula Field Office.

PROPOSED SUPPLEMENTARY RULE FOR THE MISSOULA FIELD

OFFICE

Definitions.

As used in this Supplementary Rule, the term:

Airsoft and paintball activities means any recreational activity that involves the use of replica firearms to fire non-lethal, plastic or form pellets, or paint-laden capsules, using compressed gas or electric and/or spring driven pistons. Such activities may include shooting targets or games/combat situations involving multiple people.

Firearms means any weapon capable of firing a projectile, including but not limited to a rifle, shotgun, handgun, BB-gun, pellet gun, or paintball gun.

Public lands means any lands owned by the United States and administered by the Secretary of the Interior through the Bureau of Land Management (BLM) without regard

to how the United States acquired ownership. This includes paved or unpaved parking lots or other paved or unpaved areas where vehicles are parked or areas where the public may drive a motorized vehicle, paved or unpaved roads, routes, or trails.

Prohibited Acts on public lands in the Missoula Field Office

1. You must not burn treated lumber and woody materials containing hardware (such as nails and screws) on public lands unless approved by the authorized officer.
2. You must not:
 - a. Use airsoft guns and paintball guns across any designated route of travel; across any body of water, including flowing rivers and streams, lakes, and ponds; or within 150 yards of any man-made object, structure, camp, or dwelling, unless such structure is specifically designed and permitted for use in those activities;
 - b. Use anything other than biodegradable ammunition in airsoft and paintball guns; or
 - c. Leave behind debris associated with the use of airsoft and paintball guns after completion of those activities in areas where airsoft and paintball guns are allowed.
3. You must not establish or erect a permanent or semi-permanent symbol, shrine, placard, or other structure on public lands without prior written authorization from the BLM.
4. You must not leave personal property unattended for 72 hours or longer without prior authorization from the BLM. After that time, it is deemed abandoned and can be duly removed and disposed of by the BLM, or any person acting on its behalf.

5. Prohibited Acts within the Sperry Grade Area

To be consistent with Montana Fish and Wildlife and Parks management of the Blackfoot-Clearwater Game Range, you must not enter the BLM-administered public lands in the Sperry Grade area from November 11 to May 14 of each year.

6. Prohibited Acts within the Dupont Acquired Lands

- a. You must not camp outside of designated sites or areas.
- b. You must not light or maintain a warming fire or campfire.
- c. You must not operate a motor vehicle within the Dupont Acquired Lands unless for administrative purposes upon approval by the Missoula field manager.
- d. You must not collect firewood except for predetermined authorized use established by the Missoula field manager.
- e. You must not discharge a firearm or projectile (except for legal game hunting purposes as established by the Montana Department of Fish, Wildlife and Parks) or engage in other recreational shooting including, but not limited to, plinking, target shooting, or shooting varmints.

7. Prohibited Acts within the Bear Creek Flats

- a. You must not camp outside of designated sites or areas.
- b. You must not light or maintain a fire except in designated areas or government-installed fire rings.
- c. You must not collect firewood except for use onsite. You may only burn dead and down wood.
- d. You must not discharge a firearm or projectile (except for legal game hunting purposes as established by the Montana Department of Fish, Wildlife and Parks) or engage in other recreational shooting including, but not limited to, plinking, target shooting, or shooting varmints.

8. Prohibited Acts within Garnet Ghost Town

- a. You must not use any device for detecting metal, except when allowed by permit.
- b. You must not camp unless permitted by an authorized officer.
- c. You must not discharge firearms, weapons, fireworks, or any projectile, or

engage in other recreational shooting including, but not limited to, plinking, target shooting, or shooting varmints.

- d. You must not bring an animal into the area unless the animal is on a leash that is not longer than 6 feet and is secured to an object or under the control of a person or is otherwise physically restrained at all times.
- e. You must not light or maintain a fire except in designated fire rings established by the government.
- f. You must not smoke in the buildings or within 10 feet of any building.

9. Prohibited Acts within Blackfoot Special Recreation Management Area (SRMA)

- a. You must not occupy the following day-use sites between the hours of 10 p.m. and 5 a.m.: Daigles Eddy Day Use Site, Sheep Flats Day Use Site, Thibodeau Rapids Day Use Site, Whitaker Bridge Day Use Site, Red Rock Day Use Site, Belmont Day Use Site, and River Bend Day Use Site.
- b. You must not jump from any bridge over the Blackfoot River.

10. Prohibited Acts within Limestone Cliffs Area

- a. You must not install new, permanent climbing hardware for new or existing routes unless approved by the authorized officer.
- b. You must not discharge a firearm or projectile (except for legal game hunting purposes as established by the Montana Department of Fish and Wildlife and Parks) or engage in other recreational shooting including, but not limited to, plinking, target shooting, or shooting varmints.
- c. You must not bring an animal into the area unless the animal is on a leash that is not longer than 6 feet and is secured to an object or under the control of a person or is otherwise physically restrained at all times.

Exemptions

The following persons are exempt from this supplementary rule: any Federal, State, local, or military employees acting within the scope of their official duties; members of any organized rescue or fire fighting force performing an official duty; and persons who are expressly authorized or approved by the BLM.

Enforcement

Any person who violates any part of this supplementary rule may be tried before a U.S. Magistrate and fined in accordance with 18 U.S.C. 3571, imprisoned for no more than 12 months under 43 U.S.C. 1733(a) and 43 CFR 8360.0–7, or both. In accordance with 43 CFR 8365.1–7, State or local officials may also impose penalties for violations of Montana law.

(Authority: 43 U.S.C. 1733(a), 1740; 43 CFR 8365.1-6)

Theresa M. Hanley,

Acting BLM Montana State Director.

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